

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HEATHER TURNER,	§	
	§	No. 421, 2011
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	Sussex County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 1011021478
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: March 28, 2012

Decided: May 16, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 16th day of May 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Heather Turner, the defendant-below (“Turner”), appeals from her conviction, by a Superior Court jury, of Second Degree Robbery. Turner claims that the jury’s inconsistent verdict—acquitting her and her co-defendant, Ryan Neyhart (“Neyhart”), of Conspiracy but convicting them of Second Degree Robbery—requires reversal. She further argues that there was insufficient evidence to justify her conviction for Second Degree Robbery. We find Turner’s claims to lack merit, and affirm.

2. On November 30, 2010, Joseph “Chubby Joe” Harrold (“Harrold”) drove his nephew, Joseph Everage (“Everage”), to Everage’s home in Seaford. Harrold, who is a paraplegic, drove his truck with handicap controls. While Everage was carrying a television set from his home to Harrold’s truck (in which Harrold was sitting), Turner and Neyhart approached Everage. One of the defendants (the record is unclear which) struck Everage on the head.¹ A fight between Everage and Neyhart ensued, during which Neyhart lost a tooth. Everage eventually fled the scene, leaving Harrold sitting in his truck. Both Neyhart and Turner then approached Harrold. Neyhart struck Harrold’s truck with a pipe and demanded money. Turner began rummaging through the truck, and told Harrold that she was looking for money and for Neyhart’s tooth. Turner then approached the driver’s side of the truck, where Harrold was sitting, and swung Harrold’s immobilized legs from under the steering wheel, causing Harrold to slide out of the truck seat. As Harrold leaned against the truck, Turner fished Harrold’s wallet out of his pants pocket. She and Neyhart took \$80 in cash and then gave Harrold his wallet back.

¹ Evidence introduced at trial showed that Turner and Neyhart had lived with Everage, and believed Everage had stolen money from them.

3. Turner and Neyhart both were charged with Second Degree Robbery and Conspiracy, and were tried together in the Superior Court.² After the State rested its case-in-chief, Turner moved for judgment of acquittal on the charge of Second Degree Robbery. The Superior Court denied the motion. The Superior Court instructed the jury under subsection (a)(2) of the Second Degree Robbery statute,³ which relevantly requires that a person “in the course of committing theft . . . [uses] force upon another person with intent to . . . [c]ompel the owner of the property . . . to deliver up the property.” The jury was also instructed on accomplice liability.⁴

² Neyhart faced, and was convicted of, additional charges unrelated to this appeal.

³ 11 *Del. C.* § 831(a).

⁴ The trial court instructed the jury that “in order to find a person guilty of an offense as an accomplice for Robbery in the Second Degree committed by another person, you must find that all of the following elements have been proven” beyond a reasonable doubt:

(1) Another person committed the elements of the offense charged, or another person and the person [charged], together, committed the elements of the offense charged;

(2) The person intended to promote or facilitate the commission of the offense. “Intentionally” means it was the person’s conscious object or purpose to further assist the commission of the offense;

(3) The person aided, counseled, or agreed to aid another person in planning or committing the offense; [and]

(4) You [the jury] must make an individualized determination of the person’s own culpable mental state. . . .

4. During its deliberations, the jury sent a note that asked the following question: “In [the] robbery in the second degree definition [does the term] ‘to deliver up the property’ mean he [Harrold] had to physically hand it to [the defendant]?” The trial judge responded “no” to the jury question. The judge explained that only “a causal connection between the use of force and the theft is necessary” so long as the force is “applied upon or toward Mr. Harrold with the intent to compel him to deliver the property up.” Neyhart and Turner were convicted of Second Degree Robbery, but acquitted of Conspiracy. This appeal followed.

5. Turner claims that her robbery conviction was the result of an inconsistent verdict, because she and Neyhart were acquitted of the Conspiracy charges. Under “the rule of jury lenity,” this Court may uphold a conviction that is inconsistent with another jury verdict if there is legally sufficient evidence to justify the conviction.⁵ Turner argues that the evidence was legally insufficient to support her robbery conviction. We review a claim that a conviction is not supported by legally sufficient evidence *de novo*.⁶ Our inquiry is “whether,

⁵ *Tilden v. State*, 513 A.2d 1302, 1306-07 (Del. 1986) (citation omitted).

⁶ *Lemons v. State*, 32 A.3d 358, 361 (Del. 2011).

viewing the evidence in the light most favorable to the State, a rational juror could find” that the offense “was proved beyond a reasonable doubt.”⁷

6. As Turner puts it, “[i]t cannot be argued that either defendant could be guilty of the Robbery in the Second Degree charge without also being guilty of the Conspiracy [in] the Second Degree charge.” That is an incorrect statement of law and of fact. Turner appears to confuse the separate substantive offense of Conspiracy⁸ with Delaware’s accomplice liability rule,⁹ which was applied in this

⁷ *Id.*

⁸ 11 *Del. C.* § 512 provides as follows:

A person is guilty of conspiracy in the second degree when, intending to promote or facilitate the commission of a felony, the person:

(1) Agrees with another person or persons that they or 1 or more of them will engage in conduct constituting the felony or an attempt or solicitation to commit the felony; or

(2) Agrees to aid another person or persons in the planning or commission of the felony or an attempt or solicitation to commit the felony; and the person or another person with whom the person conspired commits an overt act in pursuance of the conspiracy.

⁹ 11 *Del. C.* § 271 provides as follows:

A person is guilty of an offense committed by another person when:

(1) Acting with the state of mind that is sufficient for commission of the offense, the person causes an innocent or irresponsible person to engage in conduct constituting the offense; or

(2) Intending to promote or facilitate the commission of the offense the person:

a. Solicits, requests, commands, importunes or otherwise attempts to cause the other person to commit it; or

case in connection with the Second Degree Robbery charge. Neyhart's Robbery conviction may have depended on his liability as an accomplice to Turner, because only Turner employed "force" on Harrold, as the Second Degree robbery jury instruction required. But, *Turner's* robbery conviction did not depend on Neyhart being convicted of Conspiracy, one element of which is an agreement to commit a crime. That is, Neyhart and Turner need not have previously agreed (*i.e.*, conspired) to rob Harrold in order for Neyhart to have intentionally aided Turner's forcible theft of Harrold. It is sufficient that Neyhart was found to be an accomplice to the robbery.¹⁰ Therefore, this claim fails.

7. Turner next claims that there was insufficient evidence to convict her of Second Degree Robbery, because the State did not show that she forcibly "compel[ed]" Harrold "to deliver up" his property. This argument fails because the jury was not required to find that Harrold was, in fact, actually compelled to "deliver up" his property. Rather, all the jury needed to determine was whether Turner used force with the "*intent* to compel [Harrold] to deliver up the

b. Aids, counsels or agrees or attempts to aid the other person in planning or committing it; or

c. Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so. . . .

¹⁰ By contrast, the jury was instructed by the Superior Court that, to convict either defendant of Conspiracy, the jury must find that the "defendants *agreed with each other* that they or one of them would engage in conduct constituting robbery in the second degree." (Italics added).

property.”¹¹ In this case, a reasonable juror could have found beyond a reasonable doubt that when Turner, seeking money, forcibly moved Harrold’s body, Turner intended to compel Harrold to “deliver up” his wallet. Whether Turner explicitly did or did not request or command Harrold to act is immaterial. Therefore, the evidence was legally sufficient to convict Turner, and her contrary claim lacks merit.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹¹ Italics added.